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**IN THE
COURT OF APPEALS OF INDIANA**

STEPHEN B. REEVES,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 20A03-0604-CR-187

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry Shewmaker, Judge
Cause No. 20C01-0503-MR-43

September 6, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Stephen B. Reeves appeals his conviction for the murder of Gary Shuff, Jr., following a jury trial. Reeves raises the sole issue of whether the admission of several photographs affected his substantial rights so as to warrant a new trial. Concluding that the photographs were properly admitted and that even if the photographs should have been excluded, any error in their admission was harmless, we affirm.

Facts and Procedural History

The facts most favorable to the verdict show that on March 4, 2005, Reeves, Lyndi Lolmaugh (Reeves's live-in girlfriend), and two friends played cards at Reeves's home. Shuff arrived at Reeves's home around 11:00 p.m., after being invited by Reeves. By sometime shortly after midnight, the two friends had left and Lolmaugh had gone upstairs to bed, leaving Reeves and Shuff talking at the kitchen table. Early on March 5, Reeves awoke Lolmaugh and told her that he had shot Shuff. When Lolmaugh and Reeves returned downstairs, Lolmaugh saw Shuff sitting in a chair with blood running down his face. Shuff was making a gurgling sound, and it was apparent that he was not yet dead. Reeves shot Shuff in the face three more times, once with a handgun, and twice with a rifle he retrieved from his bedroom. Reeves finally took a towel, wrapped it around Shuff's neck, and twisted Shuff's head until the gurgling sound ceased. Reeves then pulled Shuff off the chair, laid his body on the floor and emptied Shuff's pockets.

At Reeves's direction, Lolmaugh left the home to find Steve Peepers, a neighbor, to help dispose of Shuff's body. Lolmaugh, Peepers, and Harold Curtis, who had been at

Peepers' residence, all returned to Reeves's home, at which time Reeves told Curtis and Peepers that he had killed Shuff. Reeves and Peepers wrapped Shuff's body in a plastic tarp, accidentally enclosing several items: a pair of plastic gloves, a pair of jeans, a shirt, a towel, a bankcard, a wallet, a phone card, and a sock. Reeves and Peepers then placed Shuff's body in Shuff's car, which was parked behind Reeves's house. Peepers, at Reeves's direction, left with the guns used to shoot Shuff and threw them in a nearby river. Lolmaugh and Reeves then departed, with Lolmaugh driving Shuff's car and Reeves following in his own car. They left Shuff's car in an open field and returned home in Reeves's car.

After a short investigation, Reeves was arrested and charged with Shuff's murder. Later, Peepers showed the police where he had thrown the guns in the river, and the police recovered Reeves's rifle.

At trial, the State presented the testimony of Joel Bourdon, an Elkhart Police Department detective technician who was present at the crime scene and autopsy when the photographs at issue were taken. During Bourdon's testimony, in which he referred to all the photographs at issue, the photographs were admitted over Reeves's objection as Exhibits 16 and 18 through 24. The photographs show the following:

Exhibit 16: Shuff's body wrapped in clear plastic wrap and an opaque tarp at the scene where Reeves and Lolmaugh left Shuff's car.

Exhibit 18: An autopsy table with Shuff's body wrapped in the plastic and tarp.

Exhibits 19-24: Items that the coroner found enclosed in the plastic and tarp. Respectively, a yellow rubber glove, the tarp's label, a pair of jeans, a green towel, a wallet

along with bankcards, and a white sock. In all these pictures, Shuff's body wrapped in the plastic and tarp appears in the background. Shuff's bloodied hand is visible in Exhibits 20 through 24, and Shuff's unwrapped lower body appears in Exhibit 24.

The remainder of the State's evidence against Reeves included the testimony of Lolmaugh, Peepers, Curtis, and Mercedes Martin, Reeves's 8-year-old niece, who walked into the room in which Shuff was killed while Shuff's body was on the floor. A jury found Reeves guilty of murder, and he was sentenced to fifty-five years, enhanced by ten years because of aggravating circumstances. Reeves appeals his conviction.

Discussion and Decision

I. Standard of Review

"The admission of photographic evidence is within the sound discretion of the trial court" Helsley v. State, 809 N.E.2d 292, 296 (Ind. 2004). Therefore, we will review the admission of the photographs only for abuse of discretion. Id. We will find that the trial court abused its discretion "where the decision is clearly against the logic and effect of the facts and circumstances." Smith v. State, 754 N.E.2d 502, 504 (Ind. 2001).

Even if we find that the trial court abused its discretion in admitting the photographs, we will not reverse unless Reeves's substantial rights have been affected. Ind. Evidence Rule 103(a); Pruitt v. State 834 N.E.2d 90, 117 (Ind. 2005), cert. denied, 126 S.Ct. 2936 (2006). In determining whether or not a party's substantial rights were affected, we "assess the probable impact of that evidence upon the jury." Corbett v. State, 764 N.E.2d 622, 628 (Ind. 2002).

II. Admissibility of Photographs

Reeves has challenged the admissibility of the photographs under Evidence Rule 403.

With regard to challenges to the admission of photographs under Rule 403, our supreme court has stated:

Relevant evidence, including photographs, may be excluded only if its probative value is substantially outweighed by the danger of unfair prejudice. Even gory and revolting photographs may be admissible as long as they are relevant to some material issue or show scenes that a witness could describe orally. Photographs, even those gruesome in nature, are admissible if they act as interpretative aids for the jury and have strong probative value.

Swingley v. State, 739 N.E.2d 132, 133 (Ind. 2000) (internal citations and quotations omitted).

Reeves argues that the photographs established only the uncontested fact that Shuff was dead and thus had little probative value. Although these photographs may not have tremendous probative value, we do not agree that the only fact they tend to prove is that Shuff was dead. Each photograph, except for Exhibit 20, has some probative value as to some material fact.

Exhibits 16 and 18 show Shuff's body as it was found, wrapped in plastic and a tarp, substantiating the testimony given by Peepers, Lolmaugh, and Reeves. Although these two pictures may have been unnecessary to prove the manner in which Reeves disposed of Shuff's body, as three witnesses including Reeves testified as to the manner in which Shuff's

body was disposed,¹ we cannot say that the photographs are not at all probative of this manner of disposal. The fact that Reeves does not contest the cause of Shuff's death or dispute the manner in which Shuff's body was disposed is not dispositive of this issue. See Williams v. State, 555 N.E.2d 133, 138 (Ind. 1990) (holding that the defendant's admission that the victims portrayed in challenged photographs were human beings who died of gunshot wounds does not render the photographs inadmissible if they are relevant and not so gruesome that the danger of prejudice outweighs their probative value).

Exhibit 19 shows a pair of yellow rubber gloves, and tends to corroborate Lolmaugh's testimony that Reeves instructed her to put on these gloves when cleaning and handling items around Shuff's body. Transcript at 258. Exhibit 21 shows a pair of Reeves's jeans that were found with the body, tending to discredit Reeves's version of events in which he is unable to account for his jeans being found along with Shuff's body. Id. at 672. Exhibit 22, which shows a green towel found with Shuff's body, bolsters Lolmaugh's testimony that Reeves used a green towel to twist Shuff's neck after he had shot him. Id. at 256. Exhibit 23, which shows a wallet and other various items bolsters Lolmaugh's testimony that Reeves went through Shuff's pockets after having killed him, id. at 257, and tends to discredit Reeves's testimony that he did not go through Shuff's pockets. Id. at 671.

Also, contrary to Reeves's argument that the jury could not have used the photographs

¹ We note that these pictures were introduced into evidence before Peepers, Lolmaugh, or Reeves had testified and before the cause of death had been established. Also, "[a]dmission of cumulative evidence alone is insufficient to warrant a new trial." Helsley, 809 N.E.2d at 296.

as interpretative aids,² all of the photographs illustrate Bourdon's description of the appearance of Shuff's body and of the items found wrapped with the body during the autopsy. See Phillips v. State, 550 N.E.2d 1290, 1299 (Ind. 1990) (photographs demonstrated officer's testimony of the appearance of the victim at the crime scene).

Reeves argues that the slight probative value of the photographs is substantially outweighed by the danger that the gruesome nature of these photographs prejudiced the members of the jury against Reeves and made them unable to fairly evaluate the evidence. We disagree. Although all of the photographs show a significant amount of blood, none is so gruesome that the danger that it prejudiced the jury substantially outweighs its probative value. Exhibits 19 through 21 have almost no danger of unfair prejudice, as Shuff's body is almost completely covered with the opaque tarp in these photographs. Exhibits 22 through 24 show significant amounts of blood and parts of Shuff's arms and legs; however, none of these photographs show Shuff's face, where all his injuries occurred. Again, the danger of unfair prejudice is low. Exhibits 16 and 18 do show Shuff's face, and are more gruesome³

² The State argues that because Reeves did not object at trial to the admission of the photographs specifically on the grounds that they were not used as interpretative aids, he may not make this argument on appeal. In order to preserve an issue for appeal, a party must object and state the specific grounds for the objection at trial. Gill v. State, 730 N.E.2d 709, 711 (Ind. 2000). "An objection is sufficient to preserve an issue for appeal where it 'alert[s] the trial judge fully to the legal issue being raised.'" Jones v. State, 708 N.E.2d 37, 39 (Ind. Ct. App. 1999) (quoting Goudy v. State, 689 N.E.2d 686, 692 (Ind. 1997)). When objecting to the photographs' admission, Reeves identified Rule 403 and argued, "I don't believe the jury needs to see these," and "the probative value is outweighed by the prejudicial effect [on] the jury." Tr. at 165.

Whether or not the jury uses photographs as interpretative aids is one of the factors considered by a court when determining the admissibility of photographs under Rule 403. This objection was sufficient to put the court and the State on notice of the nature of his objection and to preserve this argument for appeal.

³ We recognize the subjective nature of determining how "gruesome" a picture is; however, we note that Indiana courts have previously admitted far more graphic photographs over unfair prejudice objections. E.g., Robinson v. State, 693 N.E.2d 548, 553 (Ind. 1998) (admitted pictures of a body partially eaten by

than the other photographs, but they both demonstrate Bourdon's testimony of the condition of Shuff's body when found. "Photographs depicting the victim's injuries or demonstrating a witness' testimony are generally relevant therefore admissible and will not be rejected merely because they are gruesome or cumulative." Kubisch v. State, 784 N.E.2d 905, 923 (Ind. 2003). And although Exhibits 18 through 24 show Shuff's body on the autopsy table, none of the photographs at issue depict Shuff in a condition different from that in which Reeves left him. See Helsley, 809 N.E.2d at 296 (autopsy photographs are generally inadmissible after the pathologist has mutilated or altered the body). Moreover, as our supreme court has stated, "revolting crimes generate revolting evidence" Light, 547 N.E.2d at 1081. Defendants should not be able to use the condition in which they leave their victim as means for excluding photographic evidence of the crimes.

The trial court conducted the balancing test required by Rule 403 and decided that the danger for unfair prejudicial effect on the jury was not outweighed by the photograph's probative value. Although we recognize the relatively minimal probative value of some of the photographs, we cannot say that the trial court's decision was clearly against the logic and effect of the facts and circumstances. Therefore, the trial court did not abuse its discretion in admitting the photographs.

Finally, even if the danger of unfair prejudice substantially exceeded these photographs' probative value, any error made in admitting the photographs was harmless. These photographs were not particularly gruesome, and in light of the substantial evidence

animals); Light v. State, 547 N.E.2d 1073, 1080 (Ind. 1989) (admitted pictures of a nude, charred, and

presented against Reeves, we conclude that even if these photographs were improperly admitted, they had little or no effect on the jury.

Conclusion

The trial court did not abuse its discretion in finding that the danger of unfair prejudice caused by admitting photographs did not substantially outweigh the probative value. Further, we conclude that any error caused by the photographs admission did not affect Reeves's substantial rights and was therefore harmless. We affirm Reeves's conviction.

Affirmed.

SHARPNACK, J., and NAJAM, J., concur.